

LETTER OPINION
2000-L-99

June 13, 2000

Mr. Howard D. Swanson
Office of the City Attorney
PO Box 12909
Grand Forks, ND 58208-2909

RE: Release of Arrest Records

Dear Mr. Swanson:

Thank you for your letter concerning the propriety of the Grand Forks Police Department's release of arrest records or other information relating to a person's criminal history.

You are correct in your initial conclusion that a distinction exists between a compilation of a criminal history and the individual records which may constitute a criminal history. I have enclosed with this letter an August 6, 1999, letter opinion to State Senator Wayne Stenehjem, and a January 20, 2000, informal letter to Kidder County State's Attorney Jerry Renner discussing these same issues.

Both letters discussed the interplay between criminal history records and records of individuals which may be held by the courts. In my opinion to Senator Stenehjem, I noted that the criminal history records of an individual which are governed by N.D.C.C. § 12-60-16.1 through 12-60-16.10 are compilations of reportable events reported to this office pursuant to prescribed forms and procedures. 1999 N.D. Op. Att'y Gen. L-71, L-73 (Aug. 6 to Wayne Stenehjem). The compilation of a person's criminal history is commonly known as a "rap sheet." Id.

The source information for these compilations, however, which could include arrest records, investigative reports, incident reports, and records of court proceedings, are not within the disclosure restrictions set forth in these applicable statutory sections. 1999 N.D. Op. Att'y Gen. at L-73. These source documents, although they pertain to the events reported to this office, are different than a criminal history record which is compiled and kept by this office. As I concluded in my opinion to Senator Stenehjem, N.D.C.C. §§ 12-60-16.1 through 12-60-16.10 do not prohibit the release of source documents

Mr. Howard D. Swanson
June 13, 2000
Page 2

which are compiled under those statutes to create "criminal history record information." Id.

There are other provisions of law which prohibit or authorize restrictions on the release of certain criminal history information by a law enforcement agency. Examples of information covered by these statutory provisions include certain criminal investigative or intelligence information (N.D.C.C. § 44-04-18.7), records and files of a child alleged or found to be delinquent, unruly or deprived (N.D.C.C. § 27-20-52), the portion of a motor vehicle accident report in which a law enforcement officer expresses an opinion on the cause of an accident (N.D.C.C. § 39-08-13), and the identity of a child victim or witness (N.D.C.C. § 12.1-35-03).

You also have asked whether the Grand Forks Police Department may release criminal history records if the Department has been provided with a validly executed release or authorization by the individual whose criminal history record is being sought. Subject to other specific provisions of law which may restrict dissemination of information, such as those listed in the preceding paragraph, source documents are not subject to the restrictions in N.D.C.C. § 12-60-16.1 through 12-60-16.10 and are records which must be open to the public under N.D.C.C. § 44-04-18. Accordingly, disclosure of those records upon request is required, even in the absence of a written authorization or release by the subject of the records.

However, N.D.C.C. § 12-60-16.6 specifically identifies the Bureau of Criminal Investigation as the only agency which may disseminate compiled criminal history record information (the "rap sheet") to parties who are not described in N.D.C.C. § 12-60-16.5. There is no exception to the prohibition in N.D.C.C. § 12-60-16.6 for instances when the subject has signed a release or authorization for disclosure. If the Grand Forks City Police Department has a criminal history record, also commonly known as a "rap sheet," which is a compilation of criminal history information, the Department should not release that record but, rather, should refer the individual making the request to the Bureau of Criminal Investigation. A statutory fee will be imposed on the person making a request for a criminal history record. N.D.C.C. § 12-60-16.9. A person may examine his or her own criminal history record without payment of the fee, but only to determine the accuracy of the report.

Sincerely,

Heidi Heitkamp

Mr. Howard D. Swanson
June 13, 2000
Page 3

Attorney General

jcf/vkk
Enclosure